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6 UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 BRUCE CORKER, *et al.*,

9 Plaintiffs,

10 v.

11 COSTCO WHOLESALE CORPORATION,
12 *et al.*,

13 Defendants.
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CASE NO. 2:19-cv-00290-RSL

ORDER AWARDING ATTORNEY'S
FEES AGAINST THE KROGER CO.

15 On December 7, 2022, plaintiffs notified The Kroger Co. that its labeling of bulk
16 bins of Kivu Coffee Roasters Kona Blend products did not comply with the terms of the
17 parties' Settlement Agreement. While Kroger took some steps to correct the problem, it
18 failed to fully cure the breach within the time allowed. On July 14, 2023, plaintiffs
19 identified a separate breach involving Kroger's on-line advertising for its Private Selection
20 Kona coffee products. Shortly thereafter, Kroger offered to pay plaintiffs \$1,726.80 in
21 profits obtained through the sale of improperly marked bulk bin products and half of the
22 attorney's fees plaintiffs were then requesting. Despite repeated demands, Kroger refused
23 to provide any documents or business records in support of its profit calculations.¹
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25 ¹ Kroger substantially increased its settlement offer in October 2023, offering to pay plaintiffs all profits obtained
26 through the sale of Kivu bulk bin products at QFC and Fred Meyer stores after March 2023 (totaling \$21,923.25) plus
\$10,000 in attorney's fees. Dkt. # 937 at 35-36. Kroger made it clear, however, that plaintiffs were required to agree to
the proposed terms before Kroger would supply evidence supporting the profit calculations. Dkt. # 937 at 36.

1 On October 27, 2023, Kroger filed a motion seeking a declaration that it had not
2 breached the Settlement Agreement. Plaintiff filed a cross-motion seeking to establish the
3 existence of a breach. The motions were hard fought and fully briefed. The Court
4 ultimately concluded that, although Kroger had partially remedied the breach with regards
5 to the bulk bins and had corrected its on-line advertising materials in a timely manner, the
6 bulk bin breach continued at its QFC stores after the cure period expired on March 13,
7 2023, and plaintiffs were entitled to the gross profits received from the QFC bulk sales of
8 Kivu Kona blend from March 14, 2023, until April 23, 2023. Plaintiffs were not obligated
9 to accept counsel's unsupported calculations regarding the amount of those profits, and
10 Kroger was ordered to provide an accounting of the relevant sales and supporting sales
11 records as kept in the ordinary course of business.

12 Pursuant to ¶ 41 of the Settlement Agreement, "[i]n any action that is brought to
13 enforce this Agreement, the prevailing party shall be entitled to its reasonable costs,
14 including attorneys' fees, incurred in connection with such enforcement." Dkt. # 910 at 14.
15 Pursuant to ¶ 15 of the Settlement Agreement, if a breach were timely cured, "there shall
16 be no cause of action or damages" associated with the breach. Dkt. # 910 at 9. Thus,
17 plaintiffs had no cause of action and could not prevail on the on-line advertising claim.
18 Any fees and costs incurred in pursuing that claim are not recoverable. Plaintiffs did,
19 however, prevail on their claim of breach regarding Kroger's labeling of bulk bins of Kivu
20 Coffee Roasters Kona Blend products.

21 Having reviewed counsels' time entries, the chronology of this dispute, and the
22 submissions of the parties, the Court finds as follows:
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26 Plaintiffs declined, noting that they could not meaningfully discuss settlement amounts until they could review the sales records at issue. Dkt. # 937 at 35.

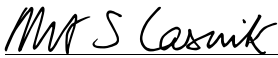
1 1. Plaintiffs substantially prevailed in this breach of contract dispute. They
2 established that Kroger breached the Settlement Agreement, and they were forced to seek
3 judicial relief when Kroger inexplicably and repeatedly refused to provide evidence
4 regarding the damages associated with the undisputed breach.

5 2. Plaintiffs are entitled to all fees incurred prior to June 2023 in pursuing a remedy
6 for the bulk bin breach, 0% of fees incurred in mid-June 2023 related to the investigation
7 of the on-line breaches, and 50% of the fees and costs incurred thereafter in pursuing both
8 the successful and unsuccessful claims. Plaintiffs are entitled to the full recovery of the
9 fees expended in attempting to settle and recover fees in this matter.

10 3. Kroger shall remit payment of \$27,567.75 to plaintiffs' counsel within fourteen
11 days of the date of this order.

12 4. Kroger shall pay to plaintiffs \$1,726.80 in damages arising from the breach of the
13 Settlement Agreement.

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15 Dated this 7th day of October, 2024.

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18 Robert S. Lasnik
19 United States District Judge
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